

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 198 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAGANBHAI JALUBHAI CHUHAN

Versus

STATE OF GUJARAT

Appearance:

MR AKSHAY H MEHTA for appellants.

MR ST MEHTA APP for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 17/07/98

ORAL JUDGEMENT

1. In this criminal appeal, the appellants herein who are the original accused Nos.1, 2, 3, 6 and 10 have brought in challenge the judgment and order dated 31.3.1989 recorded in Sessions Case No. 49 of 1988 by the learned Additional Sessions Judge, Kheda at Nadiad, whereby he has convicted the appellants for commission of the offence punishable under Section 323 of the Indian

Penal Code ('IPC' for short hereinafter) and sentenced them to suffer simple imprisonment for a period of six months and to pay a fine of Rs.500 and in default of payment of fine to undergo simple imprisonment for a further period of ten days.

2. As per the prosecution case, the present appellants alongwith other five accused on 2.8.1987 at 9 A.M. entered the fields of the complainant and took out quarrel and attempted to commit murder of the complainant and his witnesses and caused injuries to the witnesses with sticks and 'dantis' (an agricultural implement). In respect of the aforesaid offence, complaint was filed and the offence was registered against the appellants as well as other five accused persons. During investigation, statement of various witnesses were recorded, panchnama was prepared and ultimately the appellants and other five accused persons were charge-sheeted.

3. The appellant and five other accused persons were tried by the Sessions Court of Kheda at Nadiad. The learned trial Judge framed charge against the appellants as well as other accused persons for commission of the alleged offence, which was read over and explained to them, to which they pleaded not guilty and claimed to be tried and, therefore, the appellants alongwith other five persons were put to trial.

4. In order to bring home the charge levelled against the appellants and other accused persons, the prosecution has examined number of witnesses and also placed reliance on several documents. After the recording of the evidence of the prosecution witnesses was over, the learned trial Judge recorded further statement of the accused persons under section 313 of the Criminal Procedure Code. In their statement, the accused have denied their involvement in the offence and stated that the case to be forged one.

5. On appreciation of the oral as well as documentary evidence, the learned trial Judge came to the conclusion that the present appellants were involved in the offence while other accused were not involved. The learned trial Judge has recorded the finding of guilt against the appellant under Section 323 of the IPC for assaulting Maniben only while rest of the offences are not proved against the accused.

6. Feeling aggrieved by the aforesaid finding of recording of conviction and sentence for the offence punishable under Section 323 of IPC the appellants have

knocked the door of this Court in this appeal which is on the anvil of this Court.

7. I have heard learned advocate Mr. Akshay H. Mehta for the appellants and Mr. S.T. Mehta, learned APP for the respondent- State. Learned advocate Mr. Akshay Mehta for the appellants has submitted that on perusal of the evidence of the prosecution witnesses even offence under Section 323 of IPC is not proved. Therefore, finding recorded by the learned trial Judge against the appellants is vulnerable and not sustainable and hence is required to be quashed and set aside. He has drawn my attention to the charge framed against the accused, oral evidence of the injured witness Maniben as well as evidence of Dr. Nileshkumar G. Bhatt and the injury certificate issued by him.

8. Now on having perusal of charge at Ex.3 in paragraph 4 therein it is stated that the accused Nos.1 and 6/appellants No.1 and 4 gave stick blows to Maniben on both her hands while appellant/accused No.2 Rameshbhai Maganbhai Chauhan also gave stick blow to the complainant. Similarly, deceased accused Punjabhai gave stick blow to witness Ravjibhai and appellant/accused No.3 Chimanbhai Maganbhai Chauhan gave stick blow to witness Kantibhai. Therefore, charge for the offences under Section 324 read with sections 323 and 325 and 147 of IPC was framed.

9. On perusal of the oral testimony of P.W.6 Maniben Ambalal, whose evidence was recorded at Ex.30, she has, inter alia, testified that deceased accused Punjabhai Dhulabhai and accused/appellant No.1 Maganbhai Jalubhai Chauhan and accused No.6/appellant No.4 Jeshingbhai Lakhabhai Jadav gave stick blows on her left hand and left leg. She has further testified that she has not counted as to how many stick blows were given to her by them.

10. According to the prosecution case, Maniben was assaulted by three persons i.e., accused No.1/appellant No.1, accused No.6/appellant No.4 and deceased Punjabhai Dhulabhai. Whether her aforesaid statement gets corroboration from the medical evidence or not is the next question to be considered. In this regard, advertent to the evidence of Dr. Nileshkumar Girishchandra Bhatt, P.W.1, whose testimony was recorded at Ex.23, he has, inter alia, testified that on 2.8.1987 he examined Maniben and on examination he found following injuries on her person:

- (i) C.L.W. over the thumb of right hand (palmer aspect) Inverted "U" shaped 3 cm x 1 cm x 1 cm blood clotted over right hand palmer aspect. No active bleeding.
- (ii) C.L.W. over left hand dorsal aspect. Tenderness. No other external mark of injury.

He has also, inter alia, testified that victim Maniben stated before him that she was assaulted with Lathi as well as danti. The assault on Maniben with danti is not getting corroboration from the evidence of Dr. Nileshkumar Bhatt, who has unequivocally testified that the injuries received by Maniben were caused by hard and blunt substance. Therefore, it appears that assault on her with danti is merely an exaggeration by Maniben. The medical officer has also issued certificate in this regard which is at Ex. 18. On perusal of the medical certificate at Ex.18 it is clear that therein also only the above mentioned two injuries are mentioned. Relying upon the aforesaid medical certificate, Mr. Akshay Mehta, learned advocate for the appellants, has drawn my attention to the fact that according to the prosecution case, Maniben has received two injuries with stick which was inflicted by the appellant No.1/accused No.1, appellant No.4/accused No.6 and deceased Punjabhai Dhulabhai. Therefore, out of the three accused/appellants who are the accused persons who gave the two blows is not ascertainable and under these circumstances the accused/appellants are entitled to have the benefit of doubt.

11. The aforesaid submission of learned advocate Mr. Akshay Mehta carries much weight. In the instant case, it was the case of the prosecution that there was an assault by three accused on Maniben with sticks but the victim has received only two injuries, therefore, who gave the blow could not be ascertained. To put it differently, out of three accused persons who has not assaulted Maniben could not be ascertained; either one person has not given any blow or one might have given two blows. In these circumstances, according to me, accused/appellants are entitled to have the benefit of doubt. So far as the other appellants are concerned, there is no cogent, reliable and trustworthy evidence with respect to their giving blow to any of the witnesses.

12. It is interesting to note that the learned trial Judge has not believed the prosecution witnesses on almost all the counts. Under these circumstances, there was no need to rely on the prosecution witness Maniben

even for holding the appellants guilty under Section 323 of IPC.

13. In view of the unsatisfactory evidence, I am not able to persuade myself to agree with the finding recorded by the learned trial Judge convicting the appellants under Section 323 of the IPC. The learned trial Judge has after appreciating the evidence acquitted five accused persons of all the charges levelled against them and when there is insufficient evidence with respect to giving of blows to Maniben, the recording of conviction under Section 323 of IPC against the appellants can never be sustained. In view of this the order of conviction and sentence recorded against the appellants are required to be quashed and set aside by allowing the appeal.

13. In the net result, the appeal is allowed. Judgment and order recording of conviction and sentence for the commission of offence under Section 323 of IPC is quashed and set aside. The appellants are on bail. Therefore, their bail bonds shall stand cancelled. Sureties are discharged. Fine amount, if paid, be refunded to the appellants.
